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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT TACOMA

10 JOSEPHINE ELVA McKELLIPS,

11 Plaintiff,

12 vs.

13 FRANCISCAN HEALTH SYSTEM d/b/a
14 ST. ANTHONY HOSPITAL,

15 Defendant.

Case No.

NOTICE OF REMOVAL

16 PLEASE TAKE NOTICE THAT Defendant FRANCISCAN HEALTH SYSTEM, a
17 Washington Corporation d/b/a ST. ANTHONY HOSPITAL, pursuant to 28 U.S.C. §§ 1331,
18 1367 and 1441(b) hereby gives formal notice of removal of this action to the United States
19 District Court for the Western District of Washington at Tacoma from King County Superior
20 Court. The removal of this action is premised upon original jurisdiction. Defendant states the
21 following grounds for removal:

22 1. Plaintiff Josephine McKellips filed her Complaint for Damages in the Superior
23 Court of the State of Washington for King County on October 26, 2012. On October 30,
24 2012, Plaintiff served a Summons and Complaint on Defendant Franciscan Health System, a
25 Washington Corporation d/b/a St. Anthony Hospital. Defendant filed an Answer on
26 November 15, 2012.

1 2. Plaintiff filed a Motion For Leave to File an Amended Complaint on January
2 11, 2013.

3 3. The Superior Court for the State of Washington for King County issued an
4 Order Granting Leave to Amend Complaint on January 24, 2013.

5 4. Defendant filed its Answer to the Amended Complaint on February 1, 2013.
6 Copies of all pleadings on file with the King County Superior Court are attached hereto as
7 **Exhibit A.**

8 5. Removal is timely under 28 U.S.C. § 1446(b) as this removal has occurred
9 within thirty days of the date on which the Amended Complaint was allowed to be filed.

10 6. Defendant Franciscan Health System is represented by the undersigned counsel
11 at Bennett, Bigelow, & Leedom, P.S. and Polsinelli Shughart PC.

12 7. This Court has original jurisdiction over this action under 28 U.S.C. § 1331 as
13 Plaintiff's Amended Complaint contains a claim pursuant to Title VII of the Civil Rights Act
14 of 1964, 42 U.S.C. 2000e *et.seq.* The original complaint did not contain any federal claims.

15 8. Pursuant to 28 U.S.C. § 1367 this Court has supplemental jurisdiction over the
16 state law claims alleged in Plaintiff's Complaint.

17 9. Venue is proper in this District and in Tacoma because the claims arose in
18 Pierce County, Washington.

19 10. Defendant hereby removes the case from King County Superior Court to the
20 United States District Court for the Western District of Washington at Tacoma.

21 11. Promptly upon filing this Notice of Removal, Defendant will provide written
22 notice to the Plaintiff in accordance with 28 U.S.C. § 1446(c). Defendant will likewise file a
23 copy of the Notice of Removal with the Clerk of the King County Superior Court.

24 12. By seeking removal, Defendant does not waive any defenses.

25 13. Defendant reserves the right to amend or supplement this Notice of Removal.
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1 WHEREFORE, having fulfilled the statutory requirements of removal of this action,
2 Defendant hereby removes this action.

3
4 DATED this 12 day of February, 2013.

5 BENNETT BIGELOW & LEEDOM, P.S.

6
7 By: /s/Michael Madden

8 Michael Madden (WSBA #8747)
9 Email: mmadden@bblaw.com
10 601 Union Street, Suite 1500
11 Seattle, WA 98101
12 Telephone: (206) 622-5511
13 Facsimile: (206) 622-8986

14
15 POLSINELLI SHUGHART PC

16 By: /s/Karen R. Glickstein

17 Karen R. Glickstein (MO Bar #37083)
18 Email: kglickstein@polsinelli.com
19 Twelve Wyandotte Plaza
20 120 W. 12th Street, Ste. 1600
21 Kansas City, MO 64105
22 Telephone: (816) 421-3355
23 Facsimile: (816) 374-0509

24
25 ATTORNEYS FOR DEFENDANT
26

CERTIFICATE OF SERVICE

I hereby certify that on February 12, 2013, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following attorneys

Daniel Kalish (WSBA No. 35815)
Lisa A. Burke (WSBA No. 42859)
HKM Employment Attorneys PLLC
1325 Fourth Avenue, Suite 540
Seattle, WA 98101
Telephone: (206) 838-2504
Fax: (206) 260-3055
Email: dkalish@hkm.com
Email: lburke@hkm.com

ATTORNEYS FOR PLAINTIFF

/s/Michael Madden
Attorneys for Defendant Franciscan Health
System

{1852.00053/M0759750.DOCX; 1}

Exhibit A

The Honorable Julie Spector

SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR KING COUNTY

JOSEPHINE ELVA MCKELLIPS,

Plaintiff,

vs.

FRANCISCAN HEALTH SYSTEM, D.B.A
ST. ANTHONY HOSPITAL,

Defendant.

NO. 12-2-34973-8 SEA

COMPLAINT FOR DAMAGES

I. INTRODUCTION

1.1 Plaintiff Josephine Elva McKellips ("McKellips" or "Plaintiff") requests damages and attorneys' fees and costs for the wrongful conduct of Franciscan Health System d.b.a. St. Anthony Hospital ("Defendant" or "SAH"). Defendant terminated McKellips' employment for illegal and discriminatory reasons causing severe damages.

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II. JURISDICTION AND VENUE

2.1 This Court has jurisdiction over this action pursuant to RCW 49.60, and since some of the actions by Defendant alleged in this Complaint occurred in the State of Washington.

2.2 Venue is proper because the Defendant transacts business and has agents within King County and Washington State. The Plaintiff currently resides in San Diego, California.

III. PARTIES

3.1 Plaintiff is an individual residing in San Diego, California. Plaintiff was employed by Defendant in Pierce County, Washington during the relevant time period.

3.2 Defendant is a nonprofit organization, incorporated in the state of Washington. Defendant conducts business throughout King and Pierce Counties and Washington State.

IV. FACTS

4.1 McKellips was a key contributor of SAH's talented team. After joining the company in September of 2011, McKellips was recognized for her talents and initiatives. In fact, prior to reporting her pregnancy and disability, McKellips received superlative performance evaluations and was consistently lauded for her efforts.

4.2 McKellips became aware that she was pregnant in or around October 2011, shortly after starting her employment with SAH. At that time, McKellips did not immediately announce her pregnancy. McKellips wanted to wait and announce her

1 pregnancy when it was safe to do so. Thus, from October 2011 to January 2012, McKellips
2 continued to work and excel at SAH.
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5 4.3 In January 2012, as McKellips began her second trimester, she informed her
6 supervisor, Lynn Barrett, that she was expecting a child. McKellips explained to Ms. Barrett
7 that her child would be due around mid July 2012. She also informed Ms. Barrett that the
8 pregnancy would not affect her work ethic. At that time, McKellips had a perfect
9 performance record.
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17 4.5 In February 2012, McKellips' work schedule began to fluctuate, due to
18 changing department needs. As a result, McKellips morning clock-in times changed, as did
19 her offsite meeting times. McKellips was always willing to adjust her working hours and
20 conditions to meet SAH's needs; she never complained and never expected to receive special
21 treatment on account of her pregnancy.
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29 4.6 As her pregnancy progressed, throughout March and April 2012, McKellips
30 began to experience great pain in her pelvis. The pain was so great at times that McKellips
31 was immobilized and unable to walk. As a result of this pain, McKellips had to pace herself
32 when she walked from the office parking lot into the office each day. The walk was so
33 considerable for McKellips that she often had to take breaks during the walk just to make it
34 into the office on time.
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1 4.7 In April 2012, Ms. Barrett began to grow impatient with McKellips and her
2 pregnancy. On numerous occasions, Ms. Barrett urged Ms. McKellips to resign, told her that
3 "she should be at home with her other children", and even offered to demote her to a part-
4 time position. On one specific occasion, Ms. Barrett actually gave McKellips a resignation
5 letter and asked her to simply "sign-it." McKellips was always polite in refusing these
6 repeated, offensive, and illegal comments and requests. When it was clear to Ms. Barrett that
7 McKellips was not going to resign her position or voluntarily reduce her working hours, on
8 account of her pregnancy, Ms. Barrett decided to take matters into her own hands.
9

10 4.8 From March to May 2012, Ms. Barrett repeatedly chastised McKellips for
11 arriving to work 1-2 minutes late. Ms. Barrett was so determined to find a "legitimate
12 reason" to terminate McKellips' employment that she retroactively wrote McKellips up for
13 alleged tardies. No other employee was subject to this type of treatment or retroactive
14 punishment.
15

16 4.9 Each time McKellips was hauled into Human Resources to answer to Ms.
17 Barrett's frivolous tardy allegations, she reiterated to Ms. Barrett that policy was not being
18 applied to her the way it was to other employees. In fact, McKellips was being singled out
19 and treated differently because of her pregnancy.
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21 4.10 Moreover, when McKellips tried to explain to Ms. Barrett that her few 1-2
22 minute tardies could be explained by her pregnancy complications, complications that
23 inflamed her pelvis and made it impossible for her to walk the lengthy distance to the
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1 building each day at the same pace as her colleagues, Ms. Barrett appeared largely
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3 disinterested.
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6 4.11 While McKellips was able to arrive at work early, and start walking to the
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8 building earlier, she simply could not get into the building as fast as the others when she was
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10 returning from offsite meetings. Moreover, with her constant schedule changes, it was often
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12 hard to predict how early she would have to arrive at work to make the walk, without
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14 suffering additional injuries to her pelvis or in harming her unborn child.
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17 4.12 McKellips even presented Ms. Barrett with a doctor's note, a note stating that
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19 McKellips condition was so severe that she would be required to take maternity leave 2
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21 months early and be accommodated in the interim to reduce pelvic inflammation. McKellips
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23 pleaded with Ms. Barrett to allow her to park closer to the building, which would have helped
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25 her make it into the building quicker and reduced the pelvic pain associated with lengthy
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27 walking to and from the parking lot. Ms. Barrett unequivocally refused. Ms. Barrett told
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29 McKellips that, "pain is a part of every pregnancy" and that if she had "suggestions" about
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31 changes at work, she should "put them in the suggestion box."
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36 4.13 Ms. Barrett's constant berating tone and discriminating demeanor towards
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38 McKellips also began to affect the staff's tone and demeanor towards McKellips. McKellips
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40 was told by colleagues that she "was a burden because of her pregnancy." She was also
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42 repeatedly told that she should just quit her job and go home to her children. Throughout this
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44 period, McKellips was made to suffer extreme physical and emotional distress.
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1 4.14 On May 25, 2012, approximately five days before McKellips' doctor approved
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3 maternity leave was scheduled to start, SAH terminated McKellips.
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5 4.15 Defendant failed to engage in any analysis as to whether the additional 1-2
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7 minutes of walking to work or parking closer to the building to reduce walk time was a
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9 reasonable accommodation in light of McKellips severe pelvic inflammation and pregnancy
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11 complications.
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15 **V. CAUSES OF ACTION**
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17 5.1 Plaintiff realleges paragraphs 1.1 through 4.15 of the Complaint and hereby
18
19 incorporates the same by reference.
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21 5.2 The above facts state claims against Defendant for disability discrimination
22
23 and failure to accommodate, in violation of RCW 49.60 *et. seq.*, the Washington Law
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25 Against Discrimination.
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28 5.3 The above facts state claims against Defendant for gender and pregnancy
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30 discrimination, in violation of RCW 49.60 *et. seq.*, the Washington Law Against
31
32 Discrimination.
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35 5.4 Defendant's conduct thereby entitles Plaintiff to compensatory damages
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37 including damages for lost pay and benefits, emotional distress, and attorneys' fees and costs.
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VI. PRAYER FOR RELIEF

WHEREFORE Plaintiff prays for relief as follows:

- A. Damages for back pay, front pay, lost benefits, and medical expenses in an amount to be proved at trial;
- B. Damages for loss of enjoyment of life, pain and suffering, mental anguish, emotional distress, and humiliation;
- C. Prejudgment interest in an amount to be proved at trial;
- D. Compensation for any tax penalty associated with a recovery;
- E. Reasonable attorneys' fees and costs; and
- F. Whatever further and additional relief the court shall deem just and equitable.

Respectfully submitted this 26th day of October, 2012.

HKM EMPLOYMENT ATTORNEYS PLLC

s/Daniel Kalish

DANIEL KALISH, WSBA #35815

s/Lisa Burke

LISA A. BURKE, WSBA #42859

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Attorneys for Josephine Elva McKellips

The Honorable Julie Spector

SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR KING COUNTY

JOSEPHINE ELVA MCKELLIPS,

Plaintiff,

vs.

FRANCISCAN HEALTH SYSTEM, D.B.A.
ST. ANTHONY HOSPITAL,

Defendant.

NO. 12-2-34973-8 SEA

SUMMONS (20 day)

TO: FRANCISCAN HEALTH SYSTEM, D.B.A. ST. ANTHONY HOSPITAL

A lawsuit has been started against you. A copy of the Plaintiff's complaint
accompanies this summons.

In order to defend against this lawsuit, you must respond to the complaint by stating
your defense in writing, and by serving a copy upon the person signing this summons within
20 days after the service of this summons, excluding the day of service, or a default judgment
may be entered against you without notice. A default judgment is one where plaintiff is
entitled to what she asks for because you have not responded. If you serve a notice of

SUMMONS FOR FRANCISCAN
HEALTH SYSTEM - 1

HKM EMPLOYMENT ATTORNEYS PLLC
1325 Fourth Avenue, Suite 540
Seattle, Washington 98101
(206) 838-2504

1 appearance on the undersigned person, you are entitled to notice before the judgment may be
2 entered.
3
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5 You may demand that the plaintiff file this lawsuit with the court. If you do so, the
6 demand must be in writing and must be served upon the person signing this summons.
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9 Within 14 days after you serve the demand the plaintiff must file this lawsuit with the court,
10 or the service on you of this summons and complaint will be void.
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13 If you wish to seek the advice of an attorney in this matter, you should do so promptly
14 so that your written response, if any, may be served on time.
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17 This summons is issued pursuant to Rule 4 of the Superior Court Civil Rules of the
18 State of Washington.
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21 Dated this 26th day of October, 2012.
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27 **HKM EMPLOYMENT ATTORNEYS PLLC**
28
29

30 s/Daniel Kalish
31

32 DANIEL KALISH, WSBA #35815
33

34 s/Lisa Burke
35

36 LISA A. BURKE, WSBA #42859
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38 **HKM EMPLOYMENT ATTORNEYS PLLC**
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Attorneys for Josephine Elva McKellips

SUMMONS FOR FRANCISCAN
HEALTH SYSTEM - 2

HKM EMPLOYMENT ATTORNEYS PLLC
1325 Fourth Avenue, Suite 540
Seattle, Washington 98101
(206) 838-2504

The Honorable Julie Spector

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

JOSEPHINE ELVA MCKELLIPS,

Plaintiff,

vs.

FRANCISCAN HEALTH SYSTEM, d/b/a ST.
ANTHONY HOSPITAL,

Defendant.

CASE NO. 12-2-34973-8

ANSWER

COMES NOW Defendant Franciscan Health System, d/b/a St. Anthony Hospital ("Defendant" or "The Hospital"), by and through its attorneys of record, and for its Answer to Plaintiff's Complaint for Damages states as follows:

I. INTRODUCTION

1.1 Defendant admits that Plaintiff has filed a Complaint for Damages. Defendant denies that any illegal or discriminatory conduct occurred or that any cause of action exists and further denies that Plaintiff is entitled to any damages. Defendant denies any remaining allegations contained in Paragraph 1.1 of Plaintiff's Complaint.

II. JURISDICTION AND VENUE

2.1 Defendant admits that Plaintiff was employed in the State of Washington and denies the remaining allegations contained in Paragraph 2.1 of Plaintiff's Complaint.

2.2 Defendant is without sufficient information to admit or deny the allegations

1 regarding Plaintiff's current residence and, therefore, denies each such allegation. Defendant
2 admits that venue is proper in this Court and that Franciscan Health Services transacts
3 business and has agents in King County and in Washington State. Defendant denies any
4 remaining allegations contained in Paragraph 2.2 of Plaintiff's Complaint.

5 **III. PARTIES**

6 3.1 Defendant is without sufficient information to admit or deny the allegations
7 regarding Plaintiff's current residence and, therefore, denies each such allegation. Defendant
8 admits that it previously employed Plaintiff in Pierce County, Washington.

9 3.2 Defendant admits the allegations contained in Paragraph 3.2 of Plaintiff's
10 Complaint.

11 **IV. FACTS**

12 4.1 Defendant admits that McKellips began her employment at the Hospital in
13 September 2011. Defendant denies the remaining allegations contained in Paragraph 4.1 of
14 Plaintiff's Complaint.

15 4.2 Defendant is without sufficient information to admit or deny at what point
16 Plaintiff became aware that she was pregnant and, therefore, denies those allegations.
17 Defendant admits that Plaintiff worked at the Hospital between October 2011 and January
18 2012 and denies any remaining allegations contained in Paragraph 4.2 of Plaintiff's
19 Complaint.

20 4.3 Defendant admits that Plaintiff notified her supervisor that she was pregnant at
21 some point during Plaintiff's pregnancy and that her due date was in approximately mid-July
22 2012. Defendant denies the remaining allegations contained in Paragraph 4.3 of Plaintiff's
23 Complaint.

1 4.5¹ [sic] Defendant denies the allegations contained in Paragraph 4.5 of Plaintiff's
2 Complaint.

3 4.6 Defendant is without sufficient information to admit or deny the allegations
4 regarding alleged pain Plaintiff experienced in her pelvis and, therefore, denies the allegations
5 contained in Paragraph 4.6 of Plaintiff's Complaint.

6 4.7 Defendant denies the allegations contained in Paragraph 4.7 of Plaintiff's
7 Complaint.

8 4.8 Defendant admits that Barrett counseled McKellips throughout her
9 employment regarding tardiness issues. Defendant denies the remaining allegations contained
10 in Paragraph 4.8 of Plaintiff's Complaint.

11 4.9 Defendant denies the allegations contained in Paragraph 4.9 of Plaintiff's
12 Complaint.

13 4.10 Defendant denies the allegations contained in Paragraph 4.10 of Plaintiff's
14 Complaint.

15 4.11 Defendant is without sufficient information to admit or deny the allegations
16 contained in Paragraph 4.11 of Plaintiff's Complaint and, therefore, denies each such
17 allegation contained in Paragraph 4.11 of Plaintiff's Complaint..

18 4.12 Defendant admits that Barrett provided a doctor's note regarding her
19 anticipated maternity leave. Defendant denies the remaining allegations contained in
20 Paragraph 4.12 of Plaintiff's Complaint.

21 4.13 Defendant denies the allegations contained in Paragraph 4.13 of Plaintiff's
22 Complaint.

23 4.14 Defendant admits that Plaintiff was discharged on May 25, 2012 and that her
24 doctor had submitted a note asking for her maternity leave to begin on or about May 30, 2012.

25 _____
26 ¹ Plaintiff's Complaint does not contain a Paragraph 4.4.

1 Defendant denies any remaining allegations contained in Paragraph 4.14 of Plaintiff's
2 Complaint.

3 4.15 Defendant denies the allegations contained in Paragraph 4.15 of Plaintiff's
4 Complaint.

5 **V. CAUSES OF ACTION**

6 5.1 To the extent that Paragraph 5.1 of Plaintiff's Complaint purports to
7 incorporate previous allegations, Defendant hereby incorporates its previous answers,
8 including all denials.

9 5.2 Defendant denies the allegations contained in Paragraph 5.2 of Plaintiff's
10 Complaint.

11 5.3 Defendant denies the allegations contained in Paragraph 5.3 of Plaintiff's
12 Complaint.

13 5.4 Defendant denies the allegations contained in Paragraph 5.4 of Plaintiff's
14 Complaint.

15 WHEREFORE, having fully answered the allegations contained in Plaintiff's
16 Complaint, Defendant Franciscan Health System respectfully requests that this Court issue its
17 Order granting judgment in its favor, for its costs and fees incurred herein, and for all such
18 further relief as this Court deems just and proper.

19 **VI. PRAYER FOR RELIEF**

20 Defendant denies that Plaintiff is entitled to any damages and further denies that
21 Plaintiff's Complaint states any claim.

22 **VII. AFFIRMATIVE DEFENSES**

23 1. Each and every count contained in Plaintiff's Complaint fails to state a claim
24 upon which relief may be granted.

25 2. Plaintiff's claims are barred because any and all actions taken by Defendant
26 relating to Plaintiff's employment were taken for lawful, nondiscriminatory and/or other

1 legitimate business reasons, unrelated to her gender, pregnancy, or any alleged disability, or
2 any other prohibited consideration.

3 3. If Plaintiff sustained damages, which is specifically denied, such injuries were
4 caused by others and not caused by Defendant.

5 4. Plaintiff has failed to mitigate her damages, if any.

6 5. This court lacks jurisdiction over Plaintiff's claims because she has failed to
7 exhaust her administrative remedies.

8 6. Plaintiff's claims are barred by the doctrines of waiver, laches, res judicata,
9 and/or estoppel.

10 7. To the extent Plaintiff's claims are based in whole or in part upon a "mixed
11 motive" claim and the finder of fact determines, based upon legally sufficient evidence, that
12 either gender, pregnancy or plaintiff's alleged disability, was a motivating factor in any
13 employment decision at issue (which Defendant absolutely denies), Defendant is entitled to
14 judgment, in whole or in part, because the same employment decisions would have been made
15 irrespective of whether these characteristics were considered.

16 8. Plaintiff's claims are barred by all applicable statutes of limitation.

17 9. Defendant denies that it engaged in any wrongful or unlawful conduct and
18 denies that Plaintiff is entitled to any legal and/or equitable relief.

19 10. Plaintiff's claims are barred because Defendant is exempt from the provisions
20 of the Washington Law Against Discrimination, RCW 49.60, *et seq.*

21 11. Plaintiff is not a disabled individual as that term is defined in the Washington
22 Law Against Discrimination.

23 12. Any alleged disability possessed by the Plaintiff could not be reasonably
24 accommodated by Defendant.

25 13. Plaintiff's claims for relief are barred because Defendant exercised reasonable
26 care in promulgating and distributing a comprehensive equal employment and non-

1 harassment/discrimination policy and complaint procedure and Plaintiff failed to reasonably
2 take advantage of the corrective or preventative opportunities provided by Defendant or
3 otherwise avoid harm.

4 14. Defendant reserves the right to respond further and to assert any additional
5 affirmative defenses as they become evident through discovery or investigation, including the
6 defense of after acquired evidence.

7 DATED this 15th day of November, 2012.

8 BENNETT BIGELOW & LEEDOM, P.S.

9
10 By 
11 Michael Madden, WSBA #8747
12 Attorneys for Defendants

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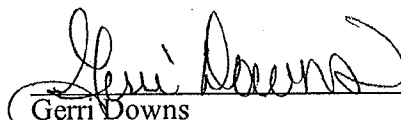
CERTIFICATE OF SERVICE

I, the undersigned, hereby certify under penalty of perjury under the laws of the State of Washington, that I am now, and at all times material hereto, a resident of the State of Washington, over the age of 18 years, not a party to, nor interested in, the above-entitled action, and competent to be a witness herein. I caused a true and correct copy of the foregoing pleading to be served this date, in the manner indicated, to the parties listed below:

Daniel Kalish, WSBA #35815
Lisa Burke, WSBA #42859
HKM Employment Attorneys PLLC
1325 Fourth Avenue, Ste 540
Seattle, WA 98101
Fax: (206) 260-3055
email: dkalish@hkm.com
lburke@hkm.com

☐ Hand Delivered
☐ Facsimile
☒ U.S. Mail
☐ Email
☐ CM/ECF

Dated this 15th day of November, 2012, at Seattle, Washington.


Gerri Downs
Legal Assistant

{1852.00053/M0717627.DOCX; 1}

COPY RECEIVED
TIME 2:40 BY CLK

The Honorable Julie Spector

JAN 11 2013

BENNETT BIGELOW
& LEEDOM

SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR KING COUNTY

JOSEPHINE ELVA MCKELLIPS,

Plaintiff,

vs.

FRANCISCAN HEALTH SYSTEM, D.B.A
ST. ANTHONY HOSPITAL,

Defendant.

NO. 12-2-34973-8 SEA

PLAINTIFF'S MOTION FOR
LEAVE TO FILE FIRST AMENDED
COMPLAINT FOR DAMAGES

**NOTED FOR HEARING: January
23, 2013**

[CLERK'S ACTION REQUIRED]

I. INTRODUCTION

Plaintiff, Josephine Elva McKellips, respectfully requests the Court grant her motion for leave to file her first amended complaint to add claims of disability discrimination and gender discrimination under Title VII of the 1964 Civil Rights Act, 42 U.S.C. 2000e *et. seq.*

II. STATEMENT OF THE FACTS

Plaintiff filed her complaint for damages on October 26, 2012, alleging unlawful discrimination based on gender, pregnancy, and disability.

PLAINTIFF'S MOTION FOR LEAVE
TO FILE FIRST AMENDED COMPLAINT
FOR DAMAGES - 1

HKM EMPLOYMENT ATTORNEYS PLLC
1325 Fourth Avenue, Suite 540
Seattle, Washington 98101
(206) 838-2504

1 Plaintiff's existing claims, contained in Plaintiff's Complaint for Damages, raise
2 causes of action based on the Washington Law Against Discrimination ("WLAD").
3

4
5 Plaintiff's Proposed First Amended Complaint raises additional federal claims for gender,
6 pregnancy, and disability discrimination under Title VII of the 1964 Civil Rights Act, 42
7 U.S.C. 2000e *et. seq.*
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12 Discovery is ongoing in this matter; however, depositions have yet to occur. It is
13 more than twelve months until the close of discovery in this case, and approximately nine
14 months before the parties are required to list primary witnesses. The trial date in this matter
15 is currently set for March 3, 2014.
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21 22 **III. ISSUE PRESENTED**

23
24 CR 15(a) declares that leave to amend "should be freely given when justice so
25 requires." The United States Supreme Court has held that "if the underlying facts or
26 circumstances relied upon by a plaintiff may be a proper subject of relief, he ought to be
27 afforded an opportunity to test his claim on the merits." Given that independent statements
28 and evidence may support her claims for gender, pregnancy, and disability discrimination
29 under Title VII of the 1964 Civil Rights Act, 42 U.S.C. 2000e *et. seq.*, should the Court grant
30 Plaintiff's motion for leave to amend her complaint for damages? The answer is yes.
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40 **IV. AUTHORITY AND ARGUMENT**

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42 Under CR 15(a), leave to amend shall be freely given when justice so requires. In
43 reversing a trial court's denial of a motion for leave to amend under a comparable federal
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1 rule, the United States Supreme Court in *Foman v. Davis*, 371 U.S. 178, 182, 83 S. Ct. 227,
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3 230, 9 L. Ed. 2d 222 (1962), said:
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5 Rule 15(a) declares that leave to amend 'shall be freely given
6 when justice so requires'; this mandate is to be heeded. See
7 generally, 3 Moore, Federal Practice (2d ed. 1948), 15.08,
8 15.10. If the underlying facts or circumstances relied upon by a
9 plaintiff may be a proper subject of relief, he ought to be
10 afforded an opportunity to test his claim on the merits. In the
11 absence of any apparent or declared reason-such as undue
12 delay, bad faith or dilatory motive on the part of the movant,
13 repeated failure to cure deficiencies by amendments previously
14 allowed, undue prejudice to the opposing party by virtue of
15 allowance of the amendment, futility of amendment, etc.-the
16 leave sought should, as the rules require, be 'freely given.'
17
18
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20 *Tagliani v. Colwell*, 10 Wn. App. 227, 233, 517 P.2d 207 (1973) citing *Foman v. Davis* 371
21 U.S. 178 (1962).
22
23

24 Like *Foman*, underlying facts relied upon by Plaintiff may be a proper subject for
25 relief under Title VII of the 1964 Civil Rights Act, 42 U.S.C. 2000e *et. seq.* Moreover,
26 Plaintiff has not delayed in seeking amendment. Plaintiff filed a charge with the United
27 States Equal Employment Opportunity Commission and received her Notice of Right to Sue
28 on December 21, 2012. *Burke Decl.* ¶ 2. Plaintiff's proposed motion to amend was
29 discussed with opposing counsel shortly thereafter. *Id.* Defendant does not oppose
30 Plaintiff's motion to for leave to amend her complaint for damages. *Id.*
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38 No basis exists to deny Plaintiff's motion. There is no undue delay, bad faith or
39 dilatory motive at play. Plaintiff only recently obtained her Right to Sue letter, permitting
40 her to seek relief under Title VII of the 1964 Civil Rights Act, 42 U.S.C. 2000e *et. seq.*
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V. CONCLUSION

Pursuant to CR 15(a) and the U.S. Supreme Court, Plaintiff's motion to amend to add her claims under Title VII of the 1964 Civil Rights Act, 42 U.S.C. 2000e *et. seq.* should be granted.

Respectfully submitted this 11th day of January, 2013.

s/ Lisa A. Burke, WSBA No. 42859
Lisa A. Burke, WSBA No. 42859
HKM EMPLOYMENT ATTORNEYS PLLC
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Attorneys for Plaintiff McKellips

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CERTIFICATE OF SERVICE

I hereby certify that on January 11, 2013, I e-filed the foregoing document with the Clerk of the Court. I also served upon counsel of record, at the address stated below, via the method of service indicated, a true and correct copy of this same document:

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 Legal Courier
 U.S. Mail (first-class, postage prepaid)
 X E-Mail
 Facsimile

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED this 11th day of January 2013, at Seattle, Washington.

s/Soula Jones
Soula Jones, Paralegal

PLAINTIFF'S MOTION FOR LEAVE
TO FILE FIRST AMENDED COMPLAINT
FOR DAMAGES - 5

HKM EMPLOYMENT ATTORNEYS PLLC
1325 Fourth Avenue, Suite 540
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(206) 838-2504

COPY RECEIVED
TIME _____ BY _____

The Honorable Julie Spector

JAN 25 2013

BENNETT BIGELOW
& LEEDOM

SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR KING COUNTY

JOSEPHINE ELVA MCKELLIPS,

Plaintiff,

vs.

FRANCISCAN HEALTH SYSTEM, D.B.A
ST. ANTHONY HOSPITAL,

Defendant.

NO. 12-2-34973-8 SEA

~~PROPOSED~~ ORDER
GRANTING PLAINTIFF'S
MOTION FOR LEAVE TO FILE
FIRST AMENDED COMPLAINT
FOR DAMAGES

THIS MATTER came before the Court on Plaintiffs' Motion For Leave To File First Amended Complaint. The Court reviewed the following documents:

1. Plaintiff's Motion for Leave to File First Amended Complaint;
2. Declaration of Lisa A. Burke in Support of Plaintiff's Motion for Leave to File First Amended Complaint;
3. Plaintiff's First Amended Complaint For Damages;
4. Opposition papers, if any, by Defendants; and
5. Reply Papers, if any, by Plaintiff.

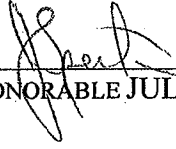
IT IS HEREBY ORDERED that Plaintiffs' Motion For Leave To File First Amended Complaint is GRANTED.

~~PROPOSED~~ ORDER GRANTING PLAINTIFF'S MOTION
FOR LEAVE TO FILE FIRST AMENDED COMPLAINT
FOR DAMAGES - 1

ORIGINAL

HKM EMPLOYMENT ATTORNEYS PLLC
1325 Fourth Avenue, Suite 540
Seattle, Washington 98101
(206) 838-2504

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2 Dated: January 23, 2013
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THE HONORABLE JULIE SPECTOR

Respectfully presented by:

s/ Lisa Burke, WSBA #42859

Lisa Burke, WSBA #42859

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Attorneys for Plaintiff McKellips

COPY RECEIVED
TIME 2:46 BY Con

The Honorable Julie Spector

JAN 11 2013

BENNETT BIGELOW
& LEEDOM

SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR KING COUNTY

JOSEPHINE ELVA MCKELLIPS,

Plaintiff,

vs.

FRANCISCAN HEALTH SYSTEM, D.B.A
ST. ANTHONY HOSPITAL,

Defendant.

NO. 12-2-34973-8 SEA

**FIRST AMENDED COMPLAINT
FOR DAMAGES**

I. INTRODUCTION

1.1 Plaintiff Josephine Elva McKellips ("McKellips" or "Plaintiff") requests damages and attorneys' fees and costs for the wrongful conduct of Franciscan Health System d.b.a. St. Anthony Hospital ("Defendant" or "SAH"). Defendant terminated McKellips' employment for illegal and discriminatory reasons causing severe damages.

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II. JURISDICTION AND VENUE

2.1 This Court has jurisdiction over this action pursuant to RCW 49.60, and since some of the actions by Defendant alleged in this Complaint occurred in the State of Washington.

2.2 Venue is proper because the Defendant transacts business and has agents within King County and Washington State. The Plaintiff currently resides in San Diego, California.

III. PARTIES

3.1 Plaintiff is an individual residing in San Diego, California. Plaintiff was employed by Defendant in Pierce County, Washington during the relevant time period.

3.2 Defendant is a nonprofit organization, incorporated in the state of Washington. Defendant conducts business throughout King and Pierce Counties and Washington State.

IV. FACTS

4.1 McKellips was a key contributor of SAH's talented team. After joining the company in September of 2011, McKellips was recognized for her talents and initiatives. In fact, prior to reporting her pregnancy and disability, McKellips received superlative performance evaluations and was consistently lauded for her efforts.

4.2 McKellips became aware that she was pregnant in or around October 2011, shortly after starting her employment with SAH. At that time, McKellips did not immediately announce her pregnancy. McKellips wanted to wait and announce her

1 pregnancy when it was safe to do so. Thus, from October 2011 to January 2012, McKellips
2
3 continued to work and excel at SAH.
4

5
6 4.3 In January 2012, as McKellips began her second trimester, she informed her
7
8 supervisor, Lynn Barrett, that she was expecting a child. McKellips explained to Ms. Barrett
9
10 that her child would be due around mid July 2012. She also informed Ms. Barrett that the
11
12 pregnancy would not affect her work ethic. At that time, McKellips had a perfect
13
14 performance record.
15
16

17
18 4.5 In February 2012, McKellips' work schedule began to fluctuate, due to
19
20 changing department needs. As a result, McKellips morning clock-in times changed, as did
21
22 her offsite meeting times. McKellips was always willing to adjust her working hours and
23
24 conditions to meet SAH's needs; she never complained and never expected to receive special
25
26 treatment on account of her pregnancy.
27
28

29
30 4.6 As her pregnancy progressed, throughout March and April 2012, McKellips
31
32 began to experience great pain in her pelvis. The pain was so great at times that McKellips
33
34 was immobilized and unable to walk. As a result of this pain, McKellips had to pace herself
35
36 when she walked from the office parking lot into the office each day. The walk was so
37
38 considerable for McKellips that she often had to take breaks during the walk just to make it
39
40 into the office on time.
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1 4.7 In April 2012, Ms. Barrett began to grow impatient with McKellips and her
2
3 pregnancy. On numerous occasions, Ms. Barrett urged Ms. McKellips to resign, told her that
4
5 “she should be at home with her other children”, and even offered to demote her to a part-
6
7 time position. On one specific occasion, Ms. Barrett actually gave McKellips a resignation
8
9 letter and asked her to simply “sign-it.” McKellips was always polite in refusing these
10
11 repeated, offensive, and illegal comments and requests. When it was clear to Ms. Barrett that
12
13 McKellips was not going to resign her position or voluntarily reduce her working hours, on
14
15 account of her pregnancy, Ms. Barrett decided to take matters into her own hands.
16
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20 4.8 From March to May 2012, Ms. Barrett repeatedly chastised McKellips for
21
22 arriving to work 1-2 minutes late. Ms. Barrett was so determined to find a “legitimate
23
24 reason” to terminate McKellips’ employment that she retroactively wrote McKellips up for
25
26 alleged tardies. No other employee was subject to this type of treatment or retroactive
27
28 punishment.
29
30

31 4.9 Each time McKellips was hauled into Human Resources to answer to Ms.
32
33 Barrett’s frivolous tardy allegations, she reiterated to Ms. Barrett that policy was not being
34
35 applied to her the way it was to other employees. In fact, McKellips was being singled out
36
37 and treated differently because of her pregnancy.
38
39
40

41 4.10 Moreover, when McKellips tried to explain to Ms. Barrett that her few 1-2
42
43 minute tardies could be explained by her pregnancy complications, complications that
44
45 inflamed her pelvis and made it impossible for her to walk the lengthy distance to the
46
47

1 building each day at the same pace as her colleagues, Ms. Barrett appeared largely
2
3 disinterested.
4

5
6 4.11 While McKellips was able to arrive at work early, and start walking to the
7
8 building earlier, she simply could not get into the building as fast as the others when she was
9
10 returning from offsite meetings. Moreover, with her constant schedule changes, it was often
11
12 hard to predict how early she would have to arrive at work to make the walk, without
13
14 suffering additional injuries to her pelvis or in harming her unborn child.
15

16
17 4.12 McKellips even presented Ms. Barrett with a doctor's note, a note stating that
18
19 McKellips condition was so severe that she would be required to take maternity leave 2
20
21 months early and be accommodated in the interim to reduce pelvic inflammation. McKellips
22
23 pleaded with Ms. Barrett to allow her to park closer to the building, which would have helped
24
25 her make it into the building quicker and reduced the pelvic pain associated with lengthy
26
27 walking to and from the parking lot. Ms. Barrett unequivocally refused. Ms. Barrett told
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29 McKellips that, "pain is a part of every pregnancy" and that if she had "suggestions" about
30
31 changes at work, she should "put them in the suggestion box."
32
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36 4.13 Ms. Barrett's constant berating tone and discriminating demeanor towards
37
38 McKellips also began to affect the staff's tone and demeanor towards McKellips. McKellips
39
40 was told by colleagues that she "was a burden because of her pregnancy." She was also
41
42 repeatedly told that she should just quit her job and go home to her children. Throughout this
43
44 period, McKellips was made to suffer extreme physical and emotional distress.
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1 4.14 On May 25, 2012, approximately five days before McKellips' doctor approved
2
3 maternity leave was scheduled to start, SAH terminated McKellips.
4

5 4.15 Defendant failed to engage in any analysis as to whether the additional 1-2
6
7 minutes of walking to work or parking closer to the building to reduce walk time was a
8
9 reasonable accommodation in light of McKellips severe pelvic inflammation and pregnancy
10
11 complications.
12
13

14
15 **V. CAUSES OF ACTION**
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17 5.1 Plaintiff realleges paragraphs 1.1 through 4.15 of the Complaint and hereby
18
19 incorporates the same by reference.
20

21 5.2 The above facts state claims against Defendant for disability discrimination
22
23 and failure to accommodate, in violation of RCW 49.60 *et. seq.*, the Washington Law
24
25 Against Discrimination, and Title VII of the 1964 Civil Rights Act, 42 U.S.C. 2000e *et. seq.*
26
27

28 5.3 The above facts state claims against Defendant for gender and pregnancy
29
30 discrimination, in violation of RCW 49.60 *et. seq.*, the Washington Law Against
31
32 Discrimination, and Title VII of the 1964 Civil Rights Act, 42 U.S.C. 2000e *et. seq.*,
33
34 (including the federal Pregnancy Discrimination Act, as it amended Title VII).
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38 5.4 Defendant's conduct thereby entitles Plaintiff to compensatory damages
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40 including damages for lost pay and benefits, emotional distress, and attorneys' fees and costs.
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VI. PRAYER FOR RELIEF

WHEREFORE Plaintiff prays for relief as follows:

- A. Damages for back pay, front pay, lost benefits, and medical expenses in an amount to be proved at trial;
- B. Damages for loss of enjoyment of life, pain and suffering, mental anguish, emotional distress, and humiliation;
- C. Prejudgment interest in an amount to be proved at trial;
- D. Compensation for any tax penalty associated with a recovery;
- E. Reasonable attorneys' fees and costs; and
- F. Whatever further and additional relief the court shall deem just and equitable.

Respectfully submitted this 11 day of January, 2013.

HKM EMPLOYMENT ATTORNEYS PLLC

s/Daniel Kalish

DANIEL KALISH, WSBA #35815

s/Lisa Burke

LISA A. BURKE, WSBA #42859

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Attorneys for Josephine Elva McKellips

CERTIFICATE OF SERVICE

I hereby certify that on January 11, 2013, I e-filed the foregoing document with the Clerk of the Court. I also served upon counsel of record, at the address stated below, via the method of service indicated, a true and correct copy of this same document:

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☐ Facsimile

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED this 11th day of January 2013, at Seattle, Washington.

s/Soula Jones
Soula Jones, Paralegal

The Honorable Julie Spector

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

JOSEPHINE ELVA MCKELLIPS,

Plaintiff,

vs.

FRANCISCAN HEALTH SYSTEM, d/b/a ST.
ANTHONY HOSPITAL,

Defendant.

CASE NO. 12-2-34973-8

ANSWER TO PLAINTIFF'S
AMENDED COMPLAINT

COMES NOW Defendant Franciscan Health System, d/b/a St. Anthony Hospital ("Defendant" or "The Hospital"), by and through its attorneys of record, and for its Answer to Plaintiff's Amended Complaint for Damages states as follows:

I. INTRODUCTION

1.1 Defendant admits that Plaintiff has filed an Amended Complaint for Damages. Defendant denies that any illegal or discriminatory conduct occurred or that any cause of action exists and further denies that Plaintiff is entitled to any damages. Defendant denies any remaining allegations contained in Paragraph 1.1 of Plaintiff's Amended Complaint.

II. JURISDICTION AND VENUE

2.1 Defendant admits that Plaintiff was employed in the State of Washington and denies the remaining allegations contained in Paragraph 2.1 of Plaintiff's Amended Complaint.

1 2.2 Defendant is without sufficient information to admit or deny the allegations
2 regarding Plaintiff's current residence and, therefore, denies each such allegation. Defendant
3 admits that venue is proper in this Court and that Franciscan Health Services transacts
4 business and has agents in King County and in Washington State. Defendant denies any
5 remaining allegations contained in Paragraph 2.2 of Plaintiff's Amended Complaint.

6 **III. PARTIES**

7 3.1 Defendant is without sufficient information to admit or deny the allegations
8 regarding Plaintiff's current residence and, therefore, denies each such allegation. Defendant
9 admits that it previously employed Plaintiff in Pierce County, Washington.

10 3.2 Defendant admits the allegations contained in Paragraph 3.2 of Plaintiff's
11 Amended Complaint.

12 **IV. FACTS**

13 4.1 Defendant admits that McKellips began her employment at the Hospital in
14 September 2011. Defendant denies the remaining allegations contained in Paragraph 4.1 of
15 Plaintiff's Amended Complaint.

16 4.2 Defendant is without sufficient information to admit or deny at what point
17 Plaintiff became aware that she was pregnant and, therefore, denies those allegations.
18 Defendant admits that Plaintiff worked at the Hospital between October 2011 and January
19 2012 and denies any remaining allegations contained in Paragraph 4.2 of Plaintiff's Amended
20 Complaint.

21 4.3 Defendant admits that Plaintiff notified her supervisor that she was pregnant at
22 some point during Plaintiff's pregnancy and that her due date was in approximately mid-July
23 2012. Defendant denies the remaining allegations contained in Paragraph 4.3 of Plaintiff's
24 Amended Complaint.

1 4.5¹ [sic] Defendant denies the allegations contained in Paragraph 4.5 of Plaintiff's
2 Amended Complaint.

3 4.6 Defendant is without sufficient information to admit or deny the allegations
4 regarding alleged pain Plaintiff experienced in her pelvis and, therefore, denies the allegations
5 contained in Paragraph 4.6 of Plaintiff's Amended Complaint.

6 4.7 Defendant denies the allegations contained in Paragraph 4.7 of Plaintiff's
7 Amended Complaint.

8 4.8 Defendant admits that Barrett counseled McKellips throughout her
9 employment regarding tardiness issues. Defendant denies the remaining allegations contained
10 in Paragraph 4.8 of Plaintiff's Amended Complaint.

11 4.9 Defendant denies the allegations contained in Paragraph 4.9 of Plaintiff's
12 Amended Complaint.

13 4.10 Defendant denies the allegations contained in Paragraph 4.10 of Plaintiff's
14 Amended Complaint.

15 4.11 Defendant is without sufficient information to admit or deny the allegations
16 contained in Paragraph 4.11 of Plaintiff's Amended Complaint and, therefore, denies each
17 such allegation.

18 4.12 Defendant admits that Barrett provided a doctor's note regarding her
19 anticipated maternity leave. Defendant denies the remaining allegations contained in
20 Paragraph 4.12 of Plaintiff's Amended Complaint.

21 4.13 Defendant denies the allegations contained in Paragraph 4.13 of Plaintiff's
22 Amended Complaint.

23 4.14 Defendant admits that Plaintiff was discharged on May 25, 2012 and that her
24 doctor had submitted a note asking for her maternity leave to begin on or about May 30, 2012.

25 _____
26 ¹ Plaintiff's Amended Complaint does not contain a Paragraph 4.4.

1 Defendant denies any remaining allegations contained in Paragraph 4.14 of Plaintiff's
2 Amended Complaint.

3 4.15 Defendant denies the allegations contained in Paragraph 4.15 of Plaintiff's
4 Amended Complaint.

5 **V. CAUSES OF ACTION**

6 5.1 To the extent that Paragraph 5.1 of Plaintiff's Amended Complaint purports to
7 incorporate previous allegations, Defendant hereby incorporates its previous answers,
8 including all denials.

9 5.2 Defendant denies the allegations contained in Paragraph 5.2 of Plaintiff's
10 Amended Complaint.

11 5.3 Defendant denies the allegations contained in Paragraph 5.3 of Plaintiff's
12 Amended Complaint.

13 5.4 Defendant denies the allegations contained in Paragraph 5.4 of Plaintiff's
14 Amended Complaint.

15 WHEREFORE, having fully answered the allegations contained in Plaintiff's
16 Amended Complaint, Defendant Franciscan Health System respectfully requests that this
17 Court issue its Order granting judgment in its favor, for its costs and fees incurred herein, and
18 for all such further relief as this Court deems just and proper.

19 **VI. PRAYER FOR RELIEF**

20 Defendant denies that Plaintiff is entitled to any damages and further denies that
21 Plaintiff's Amended Complaint states any claim.

22 **VII. AFFIRMATIVE DEFENSES**

23 1. Each and every count contained in Plaintiff's Amended Complaint fails to state
24 a claim upon which relief may be granted.

25 2. Plaintiff's claims are barred because any and all actions taken by Defendant
26 relating to Plaintiff's employment were taken for lawful, nondiscriminatory and/or other

1 legitimate business reasons, unrelated to her gender, pregnancy, or any alleged disability, or
2 any other prohibited consideration.

3 3. If Plaintiff sustained damages, which is specifically denied, such injuries were
4 caused by others and not caused by Defendant.

5 4. Plaintiff has failed to mitigate her damages, if any.

6 5. This court lacks jurisdiction over Plaintiff's claims because she has failed to
7 exhaust her administrative remedies.

8 6. Plaintiff's claims are barred by the doctrines of waiver, laches, res judicata,
9 and/or estoppel.

10 7. To the extent Plaintiff's claims are based in whole or in part upon a "mixed
11 motive" claim and the finder-of-fact determines, based upon legally sufficient evidence, that
12 either gender, pregnancy or plaintiff's alleged disability, was a motivating factor in any
13 employment decision at issue (which Defendant absolutely denies), Defendant is entitled to
14 judgment, in whole or in part, because the same employment decisions would have been made
15 irrespective of whether these characteristics were considered.

16 8. Plaintiff's claims are barred by all applicable statutes of limitation.

17 9. Defendant denies that it engaged in any wrongful or unlawful conduct and
18 denies that Plaintiff is entitled to any legal and/or equitable relief.

19 10. Plaintiff's claims are barred because Defendant is exempt from the provisions
20 of the Washington Law Against Discrimination, RCW 49.60, *et seq.*

21 11. Plaintiff is not a disabled individual as that term is defined in the Washington
22 Law Against Discrimination.

23 12. Any alleged disability possessed by the Plaintiff could not be reasonably
24 accommodated by Defendant.

25 13. Plaintiff's claims for relief are barred because Defendant exercised reasonable
26 care in promulgating and distributing a comprehensive equal employment and on-

1 harassment/discrimination policy and complaint procedure and Plaintiff failed to reasonably
2 take advantage of the corrective or preventative opportunities provided by Defendant or
3 otherwise avoid harm.

4 14. Defendant reserves the right to respond further and to assert any additional
5 affirmative defenses as they become evident through discovery or investigation, including the
6 defense of after acquired evidence.

7 DATED this 1st day of February, 2013.

8
9 BENNETT BIGELOW & LEEDOM, P.S.

10 By: 

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12 Email: mmadden@bblaw.com
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19 By: 

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ATTORNEYS FOR DEFENDANT

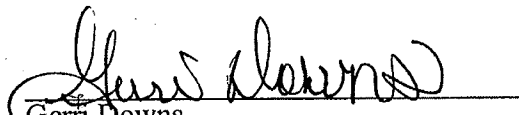
1 **CERTIFICATE OF SERVICE**

2 I, the undersigned, hereby certify under penalty of perjury under the laws of the State
3 of Washington, that I am now, and at all times material hereto, a resident of the State of
4 Washington, over the age of 18 years, not a party to, nor interested in, the above-entitled
5 action, and competent to be a witness herein. I caused a true and correct copy of the
6 foregoing pleading to be served this date, in the manner indicated, to the parties listed below:

7 Daniel Kalish, WSBA #35815
8 Lisa Burke, WSBA #42859
9 HKM Employment Attorneys PLLC
10 1325 Fourth Avenue, Ste 540
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Fax: (206) 260-3055
email: dkalish@hkm.com
11 lburke@hkm.com

☐ Hand Delivered
☐ Facsimile
☒ U.S. Mail
☒ Email
☐ CM/ECF

12 Dated this 1st day of February, 2012, at Seattle, Washington.

13
14 
15 Gerri Downs
16 Legal Assistant

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18 {1852.00053/M0753634.DOCX; 1}
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